

December 15, 2011

VIA U.S. MAIL AND EMAIL

Anne L. Olsen, P.E.
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Re: Riviera West Mutual Water Company Tentative Waste Discharge Requirements
(R5-2012-XXXX)
Client-Matter No. 39688.00000

Dear Ms. Olson:

On behalf of the Riviera West Mutual Water Company (“Riviera West”), we would like to thank the Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) for providing the Tentative Waste Discharge Requirements (“TWDRs”) in response to Riviera West’s 2008 Report of Waste Discharge (“ROWD”). We understand that this project has been a challenging one, but we appreciate the time and effort that you and your staff have put into making this comprehensive and reasonable TWDR proposal.

Overall, Riviera West is pleased with the requirements and believes that they should be manageable and achievable for this relatively small discharge to land. We also appreciate the sample monitoring reports, which should make reporting tasks simpler and easier.

We have only a few comments and suggested changes to the TWDR that follow. We would be happy to meet with you ahead of the proposed hearing date in February of 2012 to see if we could come to agreement on an errata sheet that might allow for this permit to be issued on consent without the need to expend additional time and limited resources on an adjudicatory hearing.

During the review process required by the California Environmental Quality Act (“CEQA”) in 2009 and 2010, input was requested by the County of numerous government agencies and interested parties on the project and what measures were necessary to mitigate the project’s impact on the environment. During the review process, Regional Board staff provided input on the project. Several of the proposed requirements contained within the TWDRs are not consistent with the Regional Board staff’s prior comments and do not appear necessary to

mitigate for or avoid impacts of project. For example, Regional Board staff did not comment on supernatant application scheduling (TWDR Provision C.5) or buffer requirements (TWDR Provision C.8).

The following are Riviera West's comments on the Information Sheet, TWDRs, and Monitoring and Reporting Program documents:

Information Sheet

Page 1 – **Background**

This section states that “Prior to 2007” supernatant was intermittently discharged to Clear Lake. This statement conflicts with the facts and cannot be supported by evidence in the record. The last monitoring reports submitted corresponded to a late 2003/early 2004 discharge monitoring event. This is consistent with a statement signed under penalty of perjury submitted to the Regional Board on August 5, 2008 (attached hereto as Exhibit A) that declares that discharges between late 2003 and October 2007 (when the NPDES permit expired) were discharged to land, not to Clear Lake. This section should be modified to avoid factual inaccuracies.

Request: Modify the sentence at issue to read: “Under a previous NPDES Permit, which has been rescinded, supernatant from the backwash tank was intermittently discharged to Clear Lake.”

Page 1 – **Order Terms and Conditions**

The first sentence of the first paragraph is legally incorrect. Water Code section 13000 does not require that waters that are better in quality than established water quality objectives be maintained “consistent with the maximum benefit to the people of the State.” That language is derived from State Water Resources Control Board (“SWRCB”) Res. 68-16, not the Water Code.

Request: Modify the first sentence of this section to remove “Section 13000 of the California Water Code” ***with*** “State Water Board Resolution No. 68-16.”

Tentative Waste Discharge Requirements

Page 1, Finding 1.

The last sentence in this finding is inaccurate. Riviera West provided a ROWD in 2008, additional information in 2009, and confirmed in November of 2011 that the permit staff were not waiting on any additional information from Riviera West. Therefore, this sentence is inaccurate and should be removed.

Request: Remove the last sentence of Finding 1.

Page 1, Finding 4.

As mentioned above, the reference to “Prior to 2007” and following statement is not supported by evidence in the record. The last monitoring reports submitted corresponded to a late 2003/early 2004 discharge monitoring event. This is consistent with a statement signed under penalty of perjury submitted to the Regional Board on August 5, 2008 (attached hereto as Exhibit A) that declares that discharges between late 2003 and October 2007 (when the NPDES permit expired) were discharged to land, not to Clear Lake. This sentence should be modified to avoid factual inaccuracies.

Request: Modify the sentence at issue to read: Before the permit was rescinded, filter backwash supernatant was allowed to be discharged to Clear Lake under National Pollutant Discharge Elimination System (NPDES) Order No. R5-2002-0130.

Page 1, Finding 5.

This finding about the separate Administrative Civil Liability Complaint, which has not yet been imposed, is irrelevant to this TWDR and should be removed, particularly since it does not describe events that have occurred since that 2008 Complaint was issued. Since 2008, the State Legislature adopted MMP relief legislation, the Complaint has been revised, and no MMPs have been imposed. Because this finding is factually incomplete and irrelevant to the permit action at hand, this finding should be removed and the other subsequent findings should be renumbered.

Request: Remove Finding 5 as incomplete and irrelevant to this permit.

Page 1, Finding 6.

The final sentence states “However, the Discharger did not comply with the Order.” This sentence is not entirely accurate as Riviera West has been in contact with the Regional Board on ROWD/WDR matters. As recently as November of 2011, Regional Board staff informed Mr. Thomas Smythe that no additional information was needed from Riviera West. Thus, this sentence is misleading and should be removed.

Request: Remove the last sentence of Finding 6 as incomplete and inaccurate.

Page 2, Finding 11.

The first sentence of this finding mischaracterizes the Land Application Area (“LAA”). The LAA is on a hillside, not in a creek, which implied by the use of the term “natural drainage course.” This sentence should be modified for clarity and accuracy.

Request: Modify the first sentence of Finding 11 to add “hillside area next to” before “natural

drainage course.”

Page 4, Finding 18.

The first sentence needs a clarification to be completely accurate.

Request: Modify the first sentence of Finding 18 to read: “The Discharger stopped discharging directly to Clear Lake and converted to a land discharge several years ago without submitting a Report of Waste Discharge.”

Page 5, Finding 19.

We request the last paragraph be deleted, or be revised in accordance with the comments on Provision C.5 on Page 13 discussed later in this letter.

Page 5, Heading after Finding 19.

The heading entitled “Site Specific Conditons” is misspelled.

Request: Correct the spelling of the word “Conditions” in the heading after Finding 19.

Page 6, Finding 28.

The last sentence of this finding is incomplete and should more accurately state the requirements of Water Code section 13263.

Request: Modify the language of the last sentence of Finding 28 to read:

Pursuant to Section 13263(a) of the California Water Code, waste discharge requirements must implement the Basin Plan, and consider the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, and the provisions of Section 13241.”

Page 11, Provision A.1.

The TWDRs should be clarified that indirect discharges to “surface water drainage courses” is not prohibited since the TWDR says the LAA is a “natural drainage course.” (See Finding 11.) As written, Riviera West arguably couldn’t discharge to the LAA.

Request: Modify Provision A.1. to insert the word “Direct” before “discharge” in combination with the above changes requested to Finding 11.

Page 13, Provision C.5.

The proposed condition does not permit discharge of supernatant within 24 hrs of forecasted or actual precipitation. During winter months, forecasted and actual rainfall could prohibit discharge for weeks. This type of weather pattern is frequent and typical in Lake County. Compliance with this requirement would require a large volume of additional storage for backwash water. We note that the Geotechnical Investigation identifies an allowable application rate of (5.2 gallons per square foot per day (gal/SF/d)), which is the equivalent of 8.3 inches per day (in/day) of applied water. The proposed maximum application rate is 15,000 gal/day, or 0.45 gal/SF/day, or 0.7 in/day. This will allow up to 7.6 inches of additional water to be applied in the same day before the soil is overloaded. With this factor of safety, we believe the 24 hour prohibition as proposed is excessive and unnecessary. A prohibition to limit applied water (combined precipitation and applied supernatant) to a maximum of 2 in/day would provide a safety factor of greater than 4 (8.3/2) and would be more reasonable.

In addition, the terms “storm event” and “precipitation” need to be defined and limited to measurable precipitation or a certain size storm (e.g., greater than 0.5 inch in 6 hours) as is done in many other permits. Requiring discharges to be halted for 24 hours before and after a sprinkle could be required as the permit now reads. This provision should be clarified to allow for discharges to continue if the rain event is not measurable or substantial (unless soils are already saturated).

Request: Modify Provision C.5 to read: “The Discharger shall not discharge supernatant to the LAA within 24 hours of a forecasted storm event in excess of 0.5 inches in 6 hours, within 24 hours after cessation of rainfall in excess of 0.5 inches in 6 hours, or when soils are saturated.”

Page 13, Provision C.8.

The proposed provision establishes setback requirements for the LAA. During the CEQA process, a setback of three feet was required from the property lines, with the requirement the property lines and sprinkler head locations be determined and located by a Licensed Land Survey. No comments were provided by Regional Board staff indicating these setbacks were inadequate to mitigate any potential impacts of the project. The LAA is situated on a narrow strip of land approximately one quarter mile long containing 4.63 acres, after the two parcels are merged. The property averages less than 153 feet wide and includes the water treatment plant, an access road and a concrete lined storm drain within a twenty-five foot drainage easement, reducing the effective area available for land application to a very narrow strip. The sprinkler system was designed with a minimum five foot separation from and property lines and twenty-five feet from the concrete-lined storm drain, from which it was separated by a cutoff ditch to prevent runoff reaching the ditch. The actual spray area is 0.77 acres and is tightly fit within these buffers. Increasing these buffers by five and twenty-five feet will reduce the available area to such an extent that it will make land application on the site nearly impossible and increase the surface application rates to near unsustainable levels. We request the buffer requirements not be increased beyond the five and twenty five foot distances.

Request: Modify Provision C.8 to read: The application of supernatant to the LAA shall comply with the following setback requirements:

Setback Definitions ¹	Minimum Irrigation Setback (feet)
Edge of land application area ² to any watercourse ³	25
Edge of land application area ² to industrial, domestic, or irrigation well	50
Edge of land application area ² to property line	5

Page 15, Provisions F.5. and F.6.

Since it is not clear that Riviera West has any obligation to submit toxic chemical release data under EPCRA, or that all of the Standard Provisions apply to this relatively low threat discharge, these provisions should be modified to be conditioned on applicability.

Request: Modify Provisions F.5 to include “as applicable” and F.6. to require compliance with “applicable provisions of the ‘Standard Provisions....’”

Monitoring and Reporting Program

Because of the costs involved, Riviera West would ask that the Regional Board include some flexibility in the reporting frequency if Riviera West demonstrates compliance with the reporting requirements for a certain length of time (e.g., six months to a year). Thus, Riviera West would ask that if it complies regularly and completely with monthly reports for a specified time, those reports could then be quarterly unless missed or incomplete reports occur. In that case, the reporting would return to monthly. This flexibility would be greatly appreciated and it would not affect the timing or frequency of monitoring.

Request: Allow monthly reporting requirement to be lengthened to quarterly if Riviera West complies with monthly reporting requirements timely and completely for a specified period of time.

Riviera West sincerely appreciates your serious consideration of these comments and is willing to meet with staff in person or by telephone to discuss the requested modifications further, as needed.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorme

cc: Thomas Smythe, Board of Directors President
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